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| EXAMINER | |
|---|---|
| DEODHAR, OMKAR A | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/040,239 | LEMAY ET AL. | |
| | Examiner | Art Unit | |
| | Omkar A. Deodhar | 3714 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *31 October 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/31/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### Non-Final Rejection

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of U.S. Patent No. 6,902,481. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed towards executing modular gaming software architecture. In both cases, game of chance components are decoupled from game presentation information.

Claims 1-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of

copending Application No. 11/933,057. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both directed to architecture for decoupling game logic from graphics logic. Furthermore, both inventions are directed towards groups of games that share a common game flow software module. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US Pub No 2003/0069074) in view of Guinn (US 6,039,648).**

Jackson'074 discloses a computerized wagering game method and apparatus that features an operating system kernel, a system handler application as a part of the operating system, wherein the system handler application loads and executes a dynamic number of a plurality of autonomous gaming program shared objects (Abstract).

**Claim 1:**

Jackson'074 discloses a nonvolatile storage device that facilitates the sharing of information between shared objects as the system handler unloads one shared object in order to load a second shared object. The system handler also provides an API library that allows communication between various disparate devices, modules, and software of the gaming apparatus and facilitates the use of callback functions that allow shared objects to communicate changes through the nonvolatile memory (Abstract, par. 23). Jackson'074 discloses that the system handler application includes a plurality of device handlers, providing an interface to selected hardware and the ability to monitor hardware-related events, and that the system handler has logic separate from the logic of the shared objects (Fig. 2). Some of the software gaming element library includes a game initiation sequence, a bonus module, a video gaming module, an audio module, a graphics conversion tool, and other modules and tools. Jackson'074 discloses that the shared objects act as stages for a game of chance and that the number of shared objects from a plurality of shared objects loaded and/or executed is dynamically decided (par. 88).

A game of chance is known to have a start and a finish and since the shared objects act as stages providing a game of chance (main game and bonus game), a plurality of shared objects are executed between the start and the finish of the game of chance. Jackson'074 teaches that there are multiple game states in each stage and that the presentation states are separate from the game state. In par. 155, Jackson'074 discloses that the "shared objects...define the personality and function of the game", wherein "personality" is understood to be the presentation and the operation of output devices while "function" is understood to be the game flow states of the game. Since a game or bonus shared object is understood to provide multiple states, as would be expected of any game of chance or bonus feature, it is also understood that a number of "personality" states correspond with the number of "function" states depending on the actions being performed in the game of chance.

Jackson'074 states that callback functions in nonvolatile memory, which are facilitated through the API of the system handler, can be used by a shared object to call a function within the same shared object. This feature suggests the use of separate states within a single shared object that perform specific tasks (par. 154). Furthermore, Jackson'074 uses an example of a "display_credits" function to illustrate a presentation state and suggests that a separate function of the shared object provided game flow to change the "credits" variable in the first place. This example suggests that all states are separated into game flow and presentation states. Therefore, Jackson'074 teaches a shared object (game stage), wherein the shared object contains one or more game states and corresponding presentation states, and a logical separation of the internal

workings of a state such that one state can be modified without affecting the logic of another state. Additionally, Jackson'074 teaches that the game states and the system handler communicate through one or more APIs as related to the nonvolatile memory, (par. 22-23).

It is noted that the collection of "personality" (presentation) states and the collection of "function" (game flow) states comprise presentation and game flow modules respectively.

Additionally, the pay-out table module, (Par. 57) appears to serve the same purpose as the pay table in Applicant's invention. However, Jackson'374 does not explicitly state that pay tables include staging information used by the game manager to determine a sequence of stages.

In a related invention, Guinn discloses an apparatus and method for an automated tournament gaming system. Guinn discloses dynamically changing pay tables through the selection of various tournament parameters, (Col. 2. Lines 53-57, Col. 4. Lines 64-64 & Col. 5. Lines 1-13). Furthermore, Guinn discloses that pay tables are dynamically altered between various game modes (sequences of states) in order to entice players, (Col. 7. Lines 14-27). Guinn teaches that by changing pay table parameters as described above, tournament game modes are effectively managed. Additionally, pay tables are stored in memory.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the dynamically changing pay tables

of Guinn into the device of Jackson for the purpose of easily altering payout schedules between game states. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

**Claim 2:**

Specific API , (Par. 46.)

**Claims 3 and 5:**

API is used to communicate gaming information.

**Claims 4, 11 and 12:**

As presented above, game information may be presentation information. The limitation of varying game themes is taught because a plurality of game types is disclosed.

**Claim 6:**

Sequence information is interpreted as simply start and finish time of a game of chance.

**Claim 7:**

A game manager unit is disclosed, (Figure 3 - Item 404 - Game Engine. Alternately, the OS kernel also provides game managing functions.)

**Claims 8-10:**

Please refer to the rejection of Claim 1. Additionally, note that since game outcomes vary, the number of stages in a sequence of stages must also vary.

**Claims 13, 17 and 18:**

Par. 22 - the same API and OS is used to execute a gaming application.

**Claims 14, 15 and 19:**

Please refer to the rejection of claim 1, above.

**Claims 16 and 20:**

Par. 8. discloses games such as poker and keno.

**Claim 21 and 22:**

Jackson extensively teaches usage of non-volatile memory devices. It is known that non-volatile memory is chosen from hard disk drives, DVD-ROM drives, etc.

**Claims 23-28:**

Please refer to the rejection of claim 1, above.

**Claims 29-32:**

As disclosed in Figure 11 and Par. 34 and Par 127, the system is programmable or configurable via locations remote from the gaming system.

***Remarks***

Upon further consideration, the examiner has determined that the present application is unpatentable over the prior art of Jackson in view of Guinn, as applied above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omkar A. Deodhar whose telephone number is 571-272-1647. The examiner can normally be reached on M-F 8AM – 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OAD

ROBERT E. PEZZUTO
SUPERVISORY PRIMARY EXAMINER